

1992

Salt Lake City v. Edward J. Parker : Brief of Appellant

Utah Court of Appeals

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Marsha Atkin; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

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CKET NO.

920144-CA

Salt Lake City,
Plaintiff and Appellee

V.

Edward J. Parker,
Defendant and Appellant

Brief of Appellant

Court of Appeals No. 920144-CA

This appeal is from the final judgement in Third Circuit Court, State of Utah, Case Number 925001235TC, defendant operated a motor vehicle in a manner which was not reasonable and prudent under the conditions then existing, in violation of Salt Lake City Code, Section 12-36-010, before Judge R. Reese on March 4, 1992.

Appeal is based on an order of the Court of Appeals dated March 10, 1992 granting an interlocutory appeal.

This is an appeal of the Judgement dated March 4, 1992. Notice of appeal was filed March 4, 1992.

Marsha Atkin
Representing Salt Lake City

Edward Parker
Representing Self

Argument priority classification 2

FILED

JUL 9 1992

COURT OF APPEALS

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Jurisdiction Statement

The Utah Court of Appeals has Jurisdiction over appeals from the Third Circuit Court, of The State of Utah.

The Issues of the appeal are as follows:

1. Proper Notification and Presentation of Charges

The sixth amendment to the Constitution of the United States of America requires that a defendant be " informed of the nature and cause of the accusations;". The intent of the framers of the constitution was that the complete nature of the accusations be provided to a defendant in a timely manner, that would allow the accused to prepare an adequate defence.

The full nature of the charges against me were only reviled, by the delivery of the information document, and discussions held in the hallway of the court house, only minutes before the beginning of the trial. This clearly violated my rights to be informed of the charges with adequate time to prepare a defence.

I seek that the verdict of the trial be set aside.

2. Option to Sustain My Rights to Trial by Jury Not Given.

The Seventh amendment to the Constitution of the United States of America states "In suits of common law, where the value in

controversy shall exceed twenty dollars, the right to trial by jury shall be preserved". The maximum fine for this infraction is \$ 80 well above the amount required by the constitution to preserve the rights for a jury trial. The taped transcript of the trial, and all the other court documents do not contain any motion or waiver on my part of my rights to a trial by jury.

3. The conditions set forth, by the trial judge, at the beginning of the trial that the city needed to establish in order to obtain a conviction were never met.

Judge Rease stated that in order to find me guilty that the city would have to establish that a speed lower than the posted one was safe and prudent, and what that lower speed was, and that my automobile was traveling in excess of a prudently safe speed.

The tape of the trial is void of any testimony of what speed was safe. The safe speed was never stated or established.

Furthermore it was never determined what speed I was traveling at. Officer Halls testified that no attempt was made to determine the speed of my car. The tape is void of any quantitative reference as to the speed my vehicle was traveling.

Since the conditions set forth for a conviction were not met Judge Rease's ruling of guilty should be set aside, and a ruling of not guilty due to insufficient evidence should be entered.

4. Removal/ Destruction of Evidence needed to establish the exact location of the accident and the causes thereof.

The city contends that the accident took place in the far right lane and that Mr Troy Lunberg, made a proper lane change and attempted right turn. Assumptions about the accident were made by Officer Halls based on the location of the 1980 Toyota pickup when he arrived about an hour later. A proper investigation may have revealed that the accident had actually occurred in the middle lane. Both vehicles had been moved from there resting spots after the accident.

Troy Lunberg stated in the trial that he did move his car shortly after the accident and prior to the arrival of the investigating officer. The city did not establish in the trial if my truck had remained in it's resting place after the accident.

The failure to establish if my truck remained in the place the accident took place taints the opinions of Officer Halls as to the events that produced the accident.

The failure to establish which lane the accident took place calls in to question the contention that a proper lane change had been made by Mr. Lunberg.

It was further stated in the trial that the rear windshield was covered with snow. A safe lane change as asserted by the city's witness would have been prevented by this fact.

Reasonable doubt exists as to what actually happened thus a not guilty verdict should have been rendered.

5. The city contributed to the conditions that caused the accident.

Road and Weather conditions that caused the accident were in part created by an agency of Salt Lake City. Officer Halls stated that the Airport authority was cloud seeding, creating an extremely slick Icing condition. The Weather conditions outside the seeding area were not as severe and thus a higher speed was warranted. No warnings or other indications existed to warn an unsuspecting motorist that the conditions were not the same as in other areas of the valley. The judge was wrong

to levy the maximum fine to the benefit of the city that was partially responsible for the unusual conditions. The speed may have been reasonable and prudent had the weather conditions not been artificially made worse by the city's cloud seeding operations.

6. Evidence was submitted in court based on the statements I made in an accident report given to Officer Halls, without being informed of any right to withhold such.

The Fifth Amendment states that "No person ... shall be compelled in any criminal case to be a witness against himself,...". Statements I was compelled to give to Officer Halls in the accident report, were referenced by officer Halls in the trial.

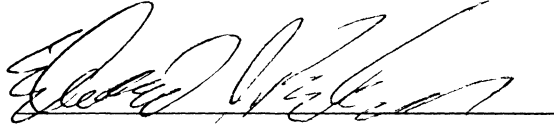
Evidence obtained by this report should be excluded from the trial and a new trial ordered.

References

Tape Number T463 & 497, Case No. 925001235.

The Constitution of the United States of America.

Dated This 8th Day of July, 1992



Edward J. Parker

915 Daniel Dr.

Fruit Heights, Utah 84037

Certificate of Mailing

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellant by depositing the same in the United States mail, postage prepaid to the following

Salt Lake City Prosecutor's office

451 South 200 East

Salt Lake City, Utah 84102

Dated This 8th day of July, 1992

By

